

BEFORE THE

Federal Communications Commission

OCT 14 1993

WASHINGTON, D.C.

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of)

MM Docket No. 93-94)

SCRIPPS HOWARD)
BROADCASTING COMPANY)

File No. BRCT-910603KX)

For Renewal of License of)
Station WMAR-TV,)
Baltimore, Maryland)

and)

FOUR JACKS BROADCASTING, INC.)

File No. BPCT-910903KE)

For Construction Permit for a)
New Television Facility on)
Channel 2 at Baltimore,)
Maryland)To: The Honorable Richard L. Sippel
Administrative Law Judge**OPPOSITION TO
STATEMENT FOR THE RECORD**

Four Jacks Broadcasting, Inc. ("Four Jacks"), by its attorneys and pursuant to the Order of the Presiding Judge, FCC 93M-648, released October 8, 1993, hereby submits its Opposition to the pleading entitled "Statement for the Record" filed by Scripps Howard Broadcasting Company ("Scripps Howard") on October 5, 1993.

1. As the Presiding Judge's Order properly observed, Scripps Howard's "Statement for the Record" is more of a "motion". Unfortunately, even if charitably viewed as a motion, the pleading is vague and contradictory as to the relief

requested. Moreover, the pleading lacks both factual specificity and precedential support.

2. Stripped to its essence, the "Statement for the Record" asks the Judge to guess at the outcome of the Commission's pending television rulemaking. The Presiding Judge earlier found he had no jurisdiction to apply new comparative criteria without the specific authorization of the Commission when he denied Scripps Howard's "Motion to Enlarge Issues to Add an Issue Considering Use of Professional Management." See, Memorandum Opinion and Order, FCC 93M-427, released June 29, 1993. The Judge should not treat the instant "Statement" any differently than the earlier motion.

3. Scripps Howard has no quarrel with the broadcast ownership interests described in Four Jacks' direct case exhibits which have been received in evidence. The "Statement for the Record" confusingly requests the following: (a) Scripps Howard seeks to cross-examine Four Jacks' principals about what Scripps Howard claims are certain other "non-ownership media interests" relevant to diversification; (b) Scripps Howard asks the Judge to take official notice of a "programming arrangement" in Pittsburgh, Pennsylvania; (c) Scripps Howard argues that "the record should reflect all the existing and proposed television programming arrangements involving Four Jacks' principals; and (d) Scripps Howard notes that it has filed a Petition to Deny^{1/} an application to assign Station WNUV-TV, Channel 54, Baltimore,

^{1/} Significantly, Scripps Howard was the only entity to file a petition to deny against the assignment. The bona fides of that petition are seriously suspect.

Maryland from WNUV-TV 54 Limited Partnership to WNUV Licensee, Inc. ("Assignee") and argues that depending on the status of the WNUV assignment and to the extent Four Jacks' principals have an attributable interest in Assignee, it expects to cross-examine Four Jacks' principals on the scope of their interests in Assignee. The factual predicate for the relief requested is noticeably missing,^{2/} and the "Statement for the Record" is incredibly muddled.

4. At the outset, it is well established that the diversification criterion of the standard comparative issue is directed toward ownership interests in media of mass communications. See, Massillon Broadcasting Co., Inc., 2 RR2d 409 (1964); Alvin L. Korngold, 29 RR2d 875 (Rev. Bd. 1975). Four Jacks has listed all of its existing ownership interests in mass media in its direct case exhibits. While it is true that there is a programming agreement by which WPGH(TV) in Pittsburgh, Pennsylvania, a station owned by Four Jacks' principals, provides some programming to WPTT(TV) in Pittsburgh, Pennsylvania, it is clear that a programming arrangement of this kind does not give rise to a diversification demerit. See, Ronald Sorenson, 67 RR2d 1392 (Rev. Bd. 1990), modified on other grounds, 68 RR2d 1580 (1991); ("Ownership interests in program production entities do not give rise to diversification demerit"); San Joaquin Television Improvement Corp., 64 RR2d 324 (1987) ("Participation in a television production company did not downgrade applicant's comparative posture under the diversity of ownership criterion");

^{2/} The attachment to the "Statement for the Record," a 1992 Commission letter, has little, if any, apparent relevance.

Cross-Interest Policy, 65 RR2d 1734 (1989) ("Cross-interest policy will no longer be applied to cross-interests involving time brokerage arrangements"). Furthermore, as Scripps Howard concedes, programming and local marketing agreements are permitted for television and the Commission has not applied its multiple ownership rule to such arrangements.^{3/} The Presiding Judge is without jurisdiction to alter Commission policy in this case. Thus, Scripps Howard's contention that it should delve into the WPGH/WPTT programming agreement must be rejected. The agreement is irrelevant to this proceeding and there is no precedential support for such an unfounded inquiry. Likewise, Scripps Howard's request that the Judge take official notice of the Pittsburgh, Pennsylvania programming agreement lacks any merit. In any event, this is not an appropriate matter for official notice.

5. Scripps Howard alludes vaguely to "all the existing" television programming arrangements involving Four Jacks' principals. There is only one such agreement as discussed above. In addition, Scripps Howard alludes to the WNUV-TV, Channel 54, Baltimore, Maryland assignment application. Apparently, Scripps Howard's contention is that a company owned by Four Jacks' principals will provide some programming to WNUV. What Scripps Howard fails to note, however, is that the Programming Services Agreement, which was submitted with the assignment application, states as follows: "This agreement will terminate upon the

^{3/} Scripps Howard strives to find some support in the radio rules but the situation is as different as radio and television.

issuance of program test authority for Channel 2 at Baltimore, Maryland to Four Jacks Broadcasting, Inc." Thus, the agreement has no effect at all upon Four Jacks' comparative posture.

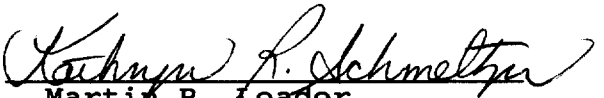
6. Moreover, Four Jacks' principals have no attributable interest in the WNUV application. To the extent that Scripps Howard is attempting to argue otherwise, its arguments are before the Commission in the context of the assignment application and that is the appropriate forum to decide the matter.

In sum, Scripps Howard has failed to present any factual or legal argument for expanding the scope of cross-examination in the vague way it suggests. Indeed, Scripps Howard acknowledges that its arguments should be addressed in the context of the WNUV-TV assignment application. Accordingly, insofar as Scripps Howard's "Statement for the Record" may be characterized as a motion, its requests must be denied.

Respectfully submitted,

FOUR JACKS BROADCASTING, INC.

By:


Martin R. Leader
Kathryn R. Schmeltzer
Gregory L. Masters

Counsel to
Four Jacks Broadcasting, Inc.

Fisher, Wayland, Cooper
and Leader
1255 23rd Street, N.W.
Suite 800
Washington, D.C. 20037
(202) 659-3494

Dated: October 14, 1993

CERTIFICATE OF SERVICE

I, Renee Gray, a secretary in the law firm of Fisher, Wayland, Cooper and Leader, do hereby certify that true copies of the foregoing "OPPOSITION TO STATEMENT FOR THE RECORD" were hand delivered this 14th day of October, 1993, to the following:

Honorable Richard L. Sippel
Administrative Law Judge
Federal Communications Commission
2000 L Street, N.W., Room 212
Washington, D.C. 20554

Norman Goldstein, Esq.
Robert Zauner, Esq.
Hearing Branch Enforcement Division
Mass Media Bureau
Federal Communications Commission
2025 M Street, N.W.
Room 7212
Washington, D.C. 20554

Kenneth C. Howard, Jr., Esq.
Leonard C. Greenebaum, Esq.
David N. Roberts, Esq.
Baker & Hostetler
1050 Connecticut Ave.
Suite 1100
Washington, D.C. 20036
Counsel for Scripps Howard Broadcasting Company



Renee Gray